

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Motion To Continue Sentencing Hearing

Defendant Mark T. Moffett hereby moves to continue his sentencing date to mid-January 2021 because, as the court expressly has found, the Coronavirus continues to present a serious health risk such that sentencing hearings “cannot be conducted in person in the District of Massachusetts without seriously jeopardizing public health and safety” at any time before December 23, 2020. *See* General Order 20-33.

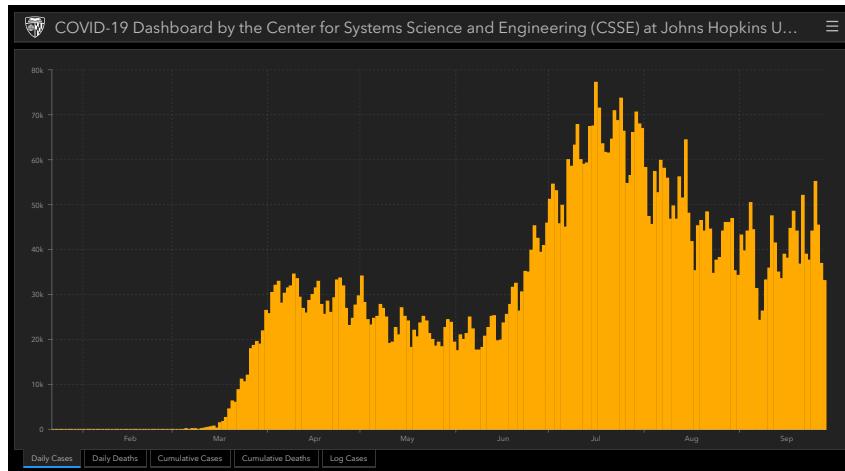
On September 24, 2020, the Chief Judge found that emergency conditions resulting from the Coronavirus “will materially affect the functioning of the federal courts.” Gen. Order 20-33. The Chief Judge specifically found that “felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencing under Rule 32 of the Federal Rules of Criminal Procedure *cannot be conducted in person* in the District of Massachusetts without seriously jeopardizing public health and safety.” *Id.* at 1 (emphasis supplied).¹

Put differently, requiring a defendant to appear at an in-person sentencing hearing during the pendency of Gen. Order 20-33 would seriously jeopardize public health and safety, not to mention the health and safety of the defendant, his family and his supporters, his counsel,

¹ Gen. Order 20-33 is taken verbatim from the court's Gen. Order 20-27, which provided that in-person plea or sentencing hearings could not take place for 90 days beginning June 26, 2020 without seriously jeopardizing public health and safety. Gen. Order 20-33 essentially continued and extended Gen. Order 20-27 for an additional 90 days.

government counsel, and court personnel. No institutional or other interest weighty enough to justify jeopardizing public health and safety by holding an in-person sentencing hearing over the next 90 days readily comes to mind.

The Chief Judge's finding that in-person sentencing hearings before December 23, 2020 present a serious health and safety risk is strongly supported by reported COVID-19 data. No one can seriously dispute that the risks from the Coronavirus are real, or that the virus continues to rage like a wildfire. From August 1 through September 28, 2020, the number of daily cases in the United States ranged from a low of over 31,000 to a staggering high of over 55,000:



<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

Massachusetts continues to add new cases in the triple digits and new deaths in the double digits every day. *See* graphs at <https://www.worldometers.info/coronavirus/usa/massachusetts/>.

The Chief Judge's findings also are supported by spikes in new cases whenever an organization or business deems it safe enough to start to ramp up to a normal level of activity. News reports from just one day, September 29, 2020, show that two floors of the Suffolk

Superior Court were closed down because of a reported COVID-19 case there. *See* <https://www.mass.gov/alerts/temporary-closure-of-floors-7-and-9-in-suffolk-county-high-rise-courthouse>.

The Worcester Superior Court also was closed down after a reported COVID-19 case there. *See* <https://www.telegram.com/news/20200929/worcester-court-closed-after-worker-is-positive-for-covid-19>. Nine players on the Tennessee Titans football team tested positive for COVID-19 and the team and its opponent have shut down all operations. *See* https://www.espn.com/nfl/story/_/id/30002250/tennessee-titans-covid-19-outbreak-know-positive-coronavirus-tests-nfl-games-postponed.

Despite the best efforts of those courts and the NFL to insure the safest possible operating conditions, the Coronavirus has shown that it will continue to strike or spread anywhere at any time.

Some people, including Mr. Moffett and his counsel, are more vulnerable to the virus than the general public because they have underlying medical conditions that put them at increased risk of serious illness including death if they were to contract the Coronavirus.² Mr. Moffett's risk is compounded further because he would have to travel interstate to attend a sentencing hearing. According to the Centers for Disease Prevention and Control, travel increases the chance of getting COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html>.

² If the court should require, Mr. Moffett and counsel will provide details, *ex parte* and under seal of their underlying conditions.

For all of the foregoing reasons, the court should continue the sentencing hearing to a date in January 2021 after the expiration of Gen. Order 20-33, provided the court does not extend that order again for another 90 days.

MARK T. MOFFETT,
By his attorney,

/s/ *E. Peter Parker*
E. Peter Parker
B.B.O. #552720
151 Merrimac Street
Boston, MA 02114
(617) 742-9099

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on September 30, 2020.

/s/ *E. Peter Parker*
E. Peter Parker